



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 74

RIN 2900-AO63

VA Veteran-Owned Small Business (VOSB) Verification Guidelines

AGENCY: Department of Veterans Affairs.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The Office of Small and Disadvantaged Business Utilization (OSDBU) is currently reviewing its regulations governing the Department of Veterans Affairs (VA) Veteran-Owned Small Business (VOSB) Verification Program. OSDBU intends to improve the regulations to provide greater clarity, to streamline the program, and to encourage more VOSBs to apply for verification. By issuing this notice of proposed rulemaking, OSDBU seeks comments on how best to approach this undertaking.

Although OSDBU identified specific issues for discussion below, it encourages commenters to discuss any issue related to improving these specific regulations and the program.

DATES: Comments must be received on or before [Insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Written comments may be submitted through www.Regulations.gov; by mail or hand-delivery to Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1068, Washington, DC

20420; or by fax to (202) 273-9026. (This is not a toll-free number.) Comments should indicate that they are submitted in response to “RIN 2900-AO63 - VA Veteran-Owned Small Business (VOSB) Verification Guidelines.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at www.Regulations.gov.

FOR FURTHER INFORMATION CONTACT: Tom Leney, Executive Director, Center for Veterans Enterprise (OOVE), Department of Veterans Affairs, 810 Vermont Ave., NW, Washington DC 20420, (202) 461-4300. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background

A. The Verification Regulations

VA first published its regulations governing the VA VOSB Verification Program on February 8, 2010 (75 FR 6101), and most recently amended them on January 19, 2011 (76 FR 3022). The regulations are codified at 38 CFR part 74. These regulations were developed using the Small Business Administration’s (SBA) regulations governing the Government-wide Service-Disabled Veteran-Owned Small Business (SDVOSB) program (13 CFR part 125) and the 8(a) Business Development Program (13 CFR part

124) for guidance generally with respect to Federal small business set-aside programs that involve agency verification. VA's regulations lay out the criteria for determining a firm's eligibility to participate in VA's Veterans First Contracting Program that provides set-aside and sole source authority placing SDVOSBs and VOSBs as first and second priority in VA acquisitions from commercial sources under the Federal Acquisition Regulation (FAR). VA's Veterans First Contracting Program does not apply to other Federal agencies.

B. Evaluation of Verification Regulations and Justification for the Rulemaking

VA seeks to find an appropriate balance between preventing fraud in the Veterans First Contracting Program and providing a process that would make it easier for more VOSBs to become verified. The Verification Program has been the subject of reports from both the Government Accountability Office and VA's Office of Inspector General stating that despite VA's Verification Program, fraud still exists in the Veterans First Contracting Program. Some stakeholder feedback has been that the current regulations at 38 CFR part 74 are too open to interpretation and are unnecessarily more rigorous than similar certification programs run by SBA.

In addition to regulatory improvements, VA is also committed to making the verification process more efficient and less burdensome and creating greater clarity by providing improved training tools. The Verification Assistance Program currently consists of four parts aimed at helping veterans understand the regulation and how to bring their businesses into compliance in order to be eligible for Veterans First contracting opportunities. These include Verification Assistance Briefs that address the most common causes of eligibility denial and where the issues are found; a Verification

Self-Assessment Tool that walks the veteran through the regulation and how it applies to the required documentation; Verification Assistance Partners consisting of veterans service organizations and other non-profit organizations to provide individual counseling services to veterans; and the Pre-Application Workshop that outlines what a veteran needs to know and do to put together a successful verification application.

II. Questions for Comment

VA is considering ways to improve the VA VOSB Verification Guidelines. VA has already collected suggestions from a wide range of sources for changes to the regulations, and has compiled them into a single document. This compilation document and the existing regulations can both be found at <http://www.vetbiz.gov>.

VA invites comments on the ideas offered in this compilation document as well as the following questions:

1. What could be changed to improve the clarity of the regulations? Where might bright lines be drawn to more clearly indicate compliance with the regulations and reduce potential for misinterpretation? Where might the addition of bright line tests create unintended consequences?

2. It has been suggested that VA should develop a list that would clearly delineate what constitutes ownership and control and what constitutes lack of control or ownership. Should a list like this be included in the rule, and if so, what should be on the list?

3. Are there changes to VA's regulations that could be made to reduce the economic impact on VOSBs?

4. Are there changes to VA Form 0877 (application) that could streamline the process?

5. What verification process improvements could help to increase efficiency and reduce burden for VOSBs?

6. What additional training tools or assistance might be offered to create more clarity for stakeholders and help them more efficiently and effectively navigate the verification regulations?

7. What documents, records, or other materials could the Office for the Center for Veterans Enterprise use to distinguish legitimate VOSBs/SDVOSBs from businesses that fraudulently seek contracts from the Government?

8. Would a special Hotline to report suspected ineligible VOSBs/SDVOSBs help the Government ensure that contracts are awarded to legitimate VOSBs/SDVOSBs?

Approved: May 7, 2013

Jose D. Riojas, Interim Chief of Staff
Department of Veterans Affairs.

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